

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF GREENVILLE, NORTH CAROLINA

These Comments are filed by the City of Greenville, North Carolina, in support of the comments filed by the National League of Cities ("NLC") and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, the City of Greenville, North Carolina, believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Greenville, North Carolina, ("City") is a city with a population of 68,687. Our franchised cable provider is CoxCom, Inc. Our community has negotiated cable franchises since 1976.

Our current franchise began on September 23, 1991, and expires on September 22, 2006. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of five percent (5%) of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide capacity for public, educational, and governmental ("PEG") access channels on the cable system. We currently have one

(1) channel devoted to public access; one (1) channel devoted to educational access; and one (1) channel devoted to governmental access.

Our franchise requires that our PEG channels be supported by the cable operator by the purchase, for the City's use, of studio, portable, and post production equipment for governmental and public access production in the amount of one hundred thousand dollars (\$100,000) and in the amount of seventy thousand dollars (\$70,000) for the repair and replacement of such equipment as requested by the City. Additionally, the cable operator is required to provide and maintain the technical plant to allow simultaneous video and audio origination for the public, educational and governmental access origination sites.

Our franchise contains a requirement that the cable provider provide one (1) scrambled channel for one (1) institutional network ("I-Net").

Our franchise requires the cable operator to provide an all channel audio emergency alert system for the City. The City may initiate emergency messages from any touch phone with an access code. This emergency alert requirement provides an important avenue of communication with our residents in the event of an emergency.

Our franchise contains customer service obligations by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The cable operator is to respond to and resolve subscribers' complaints or requests for service in connection with repairs and maintenance and malfunction of system facilities within twenty four (24) hours. Complaints or requests which may pose a potential health and safety hazard are required to be responded to immediately. Billing complaints are required to be responded to within seven (7) days. Records in connection with all inquiries, complaints and requests in connection with the system are required to be kept by the cable operator and are subject to periodic inspection by the City. The cable operator is required to maintain a business office and a maintenance and repair facility in the corporate limits of the City and to have a locally staffed telephone number for service calls for a minimum of twelve (12) hours per day, Monday through Friday.

Our franchise requires that the cable operator currently provide service to residences within the corporate limits of the City existing as of the commencement date of the franchise and to all residences within contiguous territory thereafter annexed into the corporate limits. For non-contiguous areas annexed into the corporate limits, the franchise requires that the cable operator provide service where there are at least eighteen (18) homes per mile. When there are less than eighteen (18) homes per mile in a non-contiguous area annexed into the corporate limits, service is to be provided on a cost sharing basis. The franchise requires the cable operator to provide service to commercial locations passed by cable.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains a rebuild or upgrade requirement which was required to be completed no later than one (1) year after

approval by the City of the design of the rebuild or upgrade. The rebuild or upgrade has occurred. The cable system provides the availability of cable modem service to the same set of residents which receive cable video services.

Our franchise contains insurance and bonding requirements which the cable operator is required to maintain throughout the term of the franchise. A performance bond in the amount of \$75,000 is required. The cable operator is also required to maintain general liability insurance, automobile liability insurance, workers compensation insurance, and employer's liability insurance in specified minimum amounts throughout the term of the franchise.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement. The City has the right to inspect the cable operator's income records and the right to audit and to recompute the amount to be paid to the City as a franchise fee. The City has the right to inspect, at any time during normal business hours, all books, records, reports, maps, plans, financial statements, and other like materials of the cable operator. The City has the right to inspect all construction or installation work performed by or on behalf of the cable operator and to make such tests as necessary to ensure compliance with the franchise. The City has the right, at all reasonable times, to examine the system facilities and appurtenant property of the cable operator. In the event of the occurrence of specified circumstances which are defined as a default and breach of the franchise, the City (after notice, failure to correct by the cable operator, a public hearing, and a determination that the default was without just cause) may approve a resolution that declares that the franchise will be terminated and the performance bond forfeited unless there is compliance with the terms of the franchise within ninety (90) days.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise sets forth the manner to address changes in law which affect the rights or responsibilities of either party under the franchise agreement. In the event a change in the law substantially reduces a power or authority of the City under the franchise, upon notification to the City by the cable operator of the

conflict, the City may determine to negotiate the provisions of the franchise which are affected by the change in law. The cable operator and the City are required by the franchise to negotiate in good faith the development of alternate provisions which will fairly restore the City to the maximum level of authority and power permitted by law. In the event a change in the law permits regulation not previously permitted to the City, the franchise permits the City, following good faith negotiations with the cable operator, to engage in any such additional regulation as may then be permissible.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. By the provisions of North Carolina law, a franchise may only be granted, renewed, extended, or amended by an ordinance adopted by the governing board of the City at two (2) regular meetings.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide service. The City does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request. The franchise is nonexclusive. The franchise specifically reserves the right of the City to grant additional cable television franchises which contain similar terms and conditions.

Conclusions

The local cable franchising process functions well in the City of Greenville, North Carolina. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Greenville, North Carolina, therefore, respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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